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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Forty-sixth session

SUMMARY RECORD OF THE 25th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 18 August 1994, at 3 p.m.

Chairman: Mrs. ATTAH

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The meeting was called to order at 3.10 p.m.

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED (agenda item 4) (continued) (E/CN.4/Sub.2/1994/4-6, 7 and Add.1, 8, 9, 10 and Add.1 and Corr.1, and 11; E/CN.4/Sub.2/1994/NGO/4 and 24)

1. Mr. MIRANDA (Latin American Federation of Associations of Relatives of Disappeared Detainees), speaking also on behalf of the International Commission of Jurists, Service Peace and Justice in Latin America, the Andean Commission of Jurists and the Women's International League for Peace and Freedom, said that he would confine his statement to the issues of impunity and reparation for the victims of gross violations of human rights.

2. At the Sub-Commission's forty-fifth session, a number of NGOs had submitted a joint paper in which they had expressed their complete disagreement with the concept of relative impunity propounded by the Special Rapporteurs on impunity in their report (E/CN.4/Sub.2/1993/6). Such a concept implied a degree of legitimization of wrongful practices which might lead to the belief that, while absolute impunity was unacceptable, relative impunity was not. Such a belief might well result in future violations of human rights.

3. The NGOs had also taken the view that insufficient attention had been paid to the issue of military and special courts which favoured impunity. The question of the courts responsible for judging violations of human rights was central to the issue of impunity and the conclusions and recommendations of the report should include a clear rejection of military and other special courts.

4. The NGOs he represented welcomed the draft statute for an international criminal court prepared by the International Law Commission (A/CN.4/L.491/Rev.2) with certain reservations. Individuals must have right of access to the court. A system identical to that for the crime of genocide must be introduced for other crimes against humanity and for gross violations of the rules of war. Cases of aggression brought before the court should not require a prior opinion by a political organ such as the Security Council.

5. The report on impunity for those responsible for violations of economic, social and cultural rights (E/CN.4/Sub.2/1994/11) concentrated too much on the issue of corruption which, while important, was not central to the topic. He noted, however, that the report was not a final one and hoped that a decision would be reached in the near future as to the issues which should be covered in the final report.

6. It would also be timely to give further consideration to the argument relating to the concept of the relative and evolutionary nature of economic, social and cultural rights in relation to the issue of impunity for violations of such rights. The organizations he represented considered that a study on impunity for violations of economic, social and cultural rights should cover the following points: State responsibility for meeting obligations contracted under international legal instruments such as the International Covenant on Economic, Social and Cultural Rights; the relationship between the rights recognized in such instruments and the economic development plans of States;

the relationship between the development of economic and social rights and the actions of the international financial institutions and the related responsibility of States and high officials; and the impact of the interdependence between economic, social and cultural rights on the one hand and civil and political rights on the other. The report should also include a chapter on possible action to be taken by the international community.

7. On the issue of reparation for victims of gross violations of human rights, he wished to draw attention to a statement by Mr. van Boven in his report (E/CN.4/Sub.2/1993/8) to the effect that the terms "restitution", "compensation" and "rehabilitation" represented specific aspects of reparation which was the generic term. He failed to understand therefore why the title of the Working Group should refer only to justice and compensation. He also wished to point out that the Spanish translation of the title of the report should have used the word graves instead of flagrantes in translating the English word "gross".

8. Ms. ADAMS (Sierra Club Legal Defence Fund) said that the statement she was about to make on the final report of Mrs. Ksentini on human rights and the environment had been endorsed by the following 21 non-governmental organizations: Centre Europe-Tiers Monde; Defence for Children International; Disabled Peoples' International; EIP-World Association for the School as an Instrument of Peace; Friends of the Earth International; Grand Council of the Crees; Habitat International Coalition; Human Rights Advocates; International Educational Development, Inc.; International Federation of Human Rights; International Indian Treaty Council; International Islamic Federation of Student Organizations; International League for the Rights and Liberation of Peoples; International Movement for Fraternal Union Among Races and Peoples; International Work Group for Indigenous Affairs; Natural Heritage Institute; Pax Christi; Sierra Club Legal Defence Fund; World Federation of Trade Unions; World Muslim Congress; and the World University Service.

9. At its forty-fifth session, the Sub-Commission had recognized the need to develop basic principles and guidelines with respect to human rights and the environment and had asked Mrs. Ksentini, the Special Rapporteur, to present a draft of such principles in her final report. To facilitate the formulation of such a draft, a meeting had been held from 15 to 19 May 1994 at Geneva under the auspices of the Centre for Human Rights. The draft declaration of principles on human rights and the environment, which was annexed to Mrs. Ksentini's report, resulted from that meeting. The organizations she represented joined the Special Rapporteur in recommending that declaration as a basis for further action.

10. The Special Rapporteur's final report (E/CN.4/Sub.2/1994/9) was an eloquent and forceful recognition that the United Nations human rights system must continue to address human rights and the environment. The report set out a comprehensive review of how those rights could be implemented and enforced. To facilitate implementation and enforcement, the organization she represented urged the Sub-Commission to adopt the Special Rapporteur's recommendations, including the recommendations concerning coordination and the appointment of a thematic special rapporteur of the Commission. The conclusions and

recommendations of the Special Rapporteur left no doubt that the full realization of all human rights required a safe, healthy and ecologically sound environment.

11. On behalf of the Sierra Club Legal Defence Fund, she wished to take the opportunity to express that organization's gratitude and appreciation to Mrs. Ksentini for her work over the past five years. She also wished to thank the Centre for Human Rights for its support and in particular for the May 1994 meeting of experts on human rights and the environment.

12. Mr. de MATTEIS (International Lesbian and Gay Association) said that, in many cases, lesbian and gay organizations had initially been established in connection with HIV and AIDS issues. The restrictive character of social and governmental attitudes in a number of countries had meant that the only way that lesbian and gay political organizations could be formed was as AIDS education groups. Unfortunately, that situation had forced lesbians and gay men to reinforce a stereotypical association of AIDS with gay men.

13. There were strong connections between social attitudes and legal provisions on the one hand and the ability to promote AIDS education and prevention on the other. In India, the AIDS Anti-Discrimination Movement had attempted to supply condoms to prisoners, in order to limit the spread of HIV infection, but Government officials had refused to permit any such action, pointing out that homosexual activity was a criminal offence in India. Thus the criminal law was being used to stop an important prevention programme. In response, the AIDS Anti-Discrimination Movement had begun a constitutional challenge to section 377 of the Indian Penal Code which banned homosexual activity.

14. The Human Rights Committee, in the case of Toonen v. Australia, had ruled that the anti-homosexual criminal law in the State of Tasmania was in conflict with the provisions on privacy and equality in the International Covenant on Civil and Political Rights. The State of Tasmania had argued that the criminal law was justified as part of a campaign to control the spread of HIV and AIDS. Such rationalization of the criminal law provisions was in direct conflict with the Australian Government's National HIV/AIDS Strategy, which emphasized that laws criminalizing homosexual activity obstructed public-health programmes promoting safer sex.

15. There were currently 600,000 reported cases of HIV infection in South Africa; the actual incidence would, of course, be much higher. Little had been done under the previous white-minority apartheid Government, some members of which had seen AIDS as a broom to sweep society clean of homosexuals. Two major changes had occurred. First, it was publicly recognized that AIDS occurred in South Africa among both homosexuals and heterosexuals. That fact alone had changed governmental attitudes and led to the funding of AIDS prevention programmes. Secondly, the new Government had a real commitment to work in that area; Nelson Mandela had twice spoken on HIV/AIDS issues in public speeches.

16. The new Constitution banned discrimination on the basis of sexual orientation. More significantly for HIV/AIDS issues, it banned discrimination on the basis of disability, thus barring discrimination against people living

with HIV or AIDS. Those two provisions would work together to bar discrimination against gay men on the basis of the stereotypical association of HIV/AIDS with male homosexuality.

17. Ms. von STEDINGK (Inter-African Committee on Traditional Practices) said that gender bias had formed part of the patriarchal value system in Africa and practices such as female genital mutilation formed part of tradition. The reports by the Special Rapporteur on harmful traditional practices (E/CN.4/1986/42 and E/CN.4/Sub.2/1991/6) had shown that the root cause of traditional practices affecting the health of women and children was largely the economic vulnerability of women. As marriage was the only social guarantee for the majority of women, they accepted social demands at the risk of their lives in order to ensure eligibility for marriage. The mutilation of girls, early marriage, son preference and bride burning were part of the social demands imposed on women.

18. Her organization, together with the NGO Working Group on Traditional Practices, had raised the issue of such practices at numerous seminars and conferences since the early 1980s. Two resolutions adopted by the World Health Assembly, in 1993 and 1994 respectively, had addressed the issue which had thereby gained even wider international recognition.

19. Her organization welcomed the outcome of the two seminars held by the Centre for Human Rights at Ouagadougou in 1991 and at Colombo in 1994. The recommendations made at Ouagadougou (E/CN.4/Sub.2/1991/46) and the Plan of Action adopted at Colombo (E/CN.4/Sub.2/1994/10/Add.1) both reflected essential measures to be adopted for the elimination of harmful traditional practices.

20. Her organization had several recommendations to make. It would like to join other speakers in proposing an extension of the mandate of the Special Rapporteur for a further two years in order to enable her to compile more information on the issue. It recognized the importance of the seminars already held in Africa and Asia as an initial opening and proposed, therefore, the organization of at least two more such seminars, one in Africa and the other in Asia, to study the problem further and to review the progress of work accomplished by Governments and NGOs. It also supported the preparation of fact sheets explaining the human rights dimensions of traditional practices affecting the health of women and children for wide distribution among the Member States. In conclusion, her organization called on African Governments to undertake research in their respective countries on the issue with a view to promoting public education and adopting appropriate legislation.

21. Mr. PORRET (International Fellowship of Reconciliation) expressed the hope of his organization that the Sub-Commission would continue to emphasize the vital problems connected with the right to a safe environment.

22. Mining represented a special threat to health particularly in the developing countries where companies, often dating back to the colonial era, practically made the law. In Latin America and other regions, such companies were often foreign-owned and paid little heed to problems relating to the degradation of the environment. Gold mines - often small local enterprises - represented a special threat because of their heavy use of

mercury which polluted river systems irreversibly. The problem existed particularly in Amazonia in parallel with the problem of serious deforestation.

23. Such practices were also rife in other regions of the world, especially in the mountain areas of China and the Mekong Basin, leading everywhere to terrible child diseases and deformation. The sea also was seriously threatened. A recent report by the American Worldwatch Institute had drawn attention to the steady reduction in catches because of pollution and overfishing resulting from the use of drift nets and sophisticated detection devices. It was sad to see a country like Norway, traditionally a protector of nature, refusing to observe the moratorium on whaling.

24. The trend towards total liberalization of the housing market, recommended by the World Bank as a solution to the worldwide housing shortage, was prejudicial to underprivileged groups and facilitated evictions.

25. His organization welcomed the nomination of a Special Rapporteur on the question of extreme poverty. Dialogue with the poorest sectors by means of seminars could prove beneficial at a time when the collapse of the socialist States and the disappearance of the welfare State had given much greater power to financial groups.

26. Systems originally designed to be of public service continued their pursuit of profit by every means. In Switzerland, particularly German-speaking Switzerland, more regional railways were to close in 1995 to be replaced by more polluting buses. Postal services were seeking profits by installing so-called pink telephone lines which were easily accessible to children. He welcomed the condemnation of the latter practice by the Federal Court.

27. His organization hoped that the Commission and the Sub-Commission would continue their efforts to draw attention to the problems concerning the right to a healthy environment and the right to development.

28. Ms. HAUSERMANN (International Alliance of Women) said that her organization wished to focus on the human rights rationale for preventing AIDS-related discrimination. Efforts to prevent discrimination and other abuses of rights in the context of AIDS had been woefully inadequate. Part of the reason might lie in the wrongful assumption that AIDS was simply a medical matter or in the fact that those concerned with justice and human rights issues at national or international levels had not yet recognized the devastating impact of AIDS-related discrimination. It might also be that some people considered HIV/AIDS to be self-induced and the resultant social stigma well deserved.

29. If the concept of universality was to have any meaning, it must confirm the rights of every individual to be protected from abuse of his or her rights, regardless of occupation or behaviour patterns. Any inroad into that doctrine was particularly dangerous. The experience of the AIDS pandemic had indicated the danger of attaching blame to particular groups. It had also

indicated the ease with which a denial of the rights of stigmatized groups could lead to much wider violations of rights and adversely affect the well-being and stability of societies as a whole.

30. Her organization welcomed the Sub-Commission's current emphasis on developing strategies for the prevention of discrimination. That was clearly of vital importance in the context of AIDS. As a starting-point there needed to be accurate information available to everyone on how HIV was and was not transmitted. In some societies, however, religious and social norms might inhibit sex education and AIDS information being given to schoolchildren and young people. Urgent attention needed to be given to working together with religious groups to ensure their cooperation in providing that vital information. Such education needed to be complemented by education on human rights and responsibilities, in particular the obligations of respect and tolerance. In addition, States should be encouraged to review their laws and practices - not just in the field of public health but across the board - to ensure that they complied with international human rights standards.

31. In earlier interventions, her organization had referred to the particular vulnerability of women to the risk of HIV infection as a result of their disadvantaged legal, economic and social status. Similar vulnerability was suffered by all disadvantaged or marginalized groups. Disturbing reports had been received of the heightened risk of HIV suffered by street children, indigenous populations, ethnic minorities and homeless people. Indeed, everyone lacking adequate education or access to health care might be denied the life-saving information they should receive on how to avoid HIV. Urgent efforts must be made to ensure that AIDS education was targeted to reach those groups as well as those who might be physically unable to benefit from mass AIDS education campaigns, such as people with sight or hearing impediments.

32. The Rights and Humanity Declaration and Charter on HIV and AIDS submitted to the Commission on Human Rights in 1992 by the Government of Gambia (E/CN.4/1992/82) provided detailed guidelines for the protection of human rights in the context of the public health and social response to AIDS and would form a useful basis for a United Nations declaration or guidelines.

33. Her organization wished to make a number of suggestions for consideration by the Sub-Commission. First, it endorsed WHO's proposal that the Sub-Commission should state clearly and unambiguously that discrimination in enjoyment of rights on the basis of AIDS or HIV status, actual or presumed, was prohibited by existing non-discrimination provisions and that any such discrimination by a Government or public authorities amounted to a violation of human rights. Secondly, the Sub-Commission might recommend to the Commission the development of a declaration of human rights standards applicable in the context of AIDS and guidelines on the prevention of AIDS-related discrimination. Thirdly, with a view to developing strategies for the prevention of discrimination, the Sub-Commission might propose to the Commission on Human Rights that it recommend that the Centre for Human Rights organize an expert meeting on protecting human rights and preventing discrimination in the context of AIDS. Fourthly, the Sub-Commission might recommend that a human rights perspective be integrated throughout the future work of the United Nations programme on AIDS.

34. In conclusion, her organization endorsed WHO's plea that the Sub-Commission continue to give urgent attention to the protection of human rights in the context of AIDS within each of its relevant agenda items and within the mandates of its working groups and thematic rapporteurs.

35. Mr. SAMOURA (African Association of Education for Development) said that human rights violations constantly occurred in Africa because the State apparatus in many countries simply ignored the laws in force and the international treaties which they had signed and ratified. There was no real human rights education policy in those countries, and African populations, 75 per cent of whom were illiterate and rural, were to all intents and purposes marginalized.

36. As part of its campaign against ignorance and social disintegration and for democratic development, his organization had started a multi-annual social project called the African Centre for Rehabilitation of Victims of Torture and Repression, based in Accra, Ghana. Since it was virtually impossible for such victims in Africa to go to Europe or North America for treatment, his organization was approaching the international community for funding to support its projects in Africa.

37. His organization supported the plan of action for the elimination of harmful traditional practices affecting the health of women and children, was organizing human rights awareness campaigns throughout Africa and had published, in April 1993, a special issue of its magazine on the education of women as a basis for development.

38. Mr. DUBE (International Federation for the Protection of the Rights of Ethnic, Religious, Linguistic and Other Minorities) said that resource exploitation and large-scale development schemes usually led to environmental problems and gross violations of human rights and freedoms, the main factor being a lack of control by those directly affected. Such schemes mainly involved drilling for oil, mining, forest exploitation and dam-building. Although States were responsible for protecting their citizens when it came to dealing with multinationals and big business in general, the local population was seldom consulted.

39. Large multinational companies were constantly involved in the major conflict areas involving environmental degradation and indigenous peoples, and he gave several examples of such conflicts, some of which had caused considerable loss of life. The multinationals should play a more active role in conflict prevention and mediation. Conflicts threatened profits, so it was in their interest to prevent them from arising. The local indigenous communities should be adequately consulted before operations began and, if significant environmental degradation resulted from the operations, the question of adequate compensation had to be addressed.

40. When considering the role of the environment in connection with human rights, the Special Rapporteur should not just examine States and their "large-scale development operations" but should challenge businesses as well. Those multinationals and other companies which continued to exploit the resources of indigenous peoples and traditional landowners must become aware of their responsibilities and conduct "ethical business". They must

acknowledge that their operations could, directly or indirectly, lead to violations of human rights and that, consequently, they had a responsibility, like the States that were often their partners, to respect the Universal Declaration of Human Rights and ensure that their operations did not violate that or any other international convention or declaration.

41. Ms. GILLESPIE (International Work Group for Indigenous Affairs) said that, in many cases, efforts by indigenous people to protect their environment were met with the full force of the State, involving systematic human rights violations. The reason frequently given by States committing such violations was the need for "development". Racism and cultural prejudices were often used as a cloak for attacks on indigenous people, who were wrongly characterized as "primitive".

42. The widespread destruction of the environment for short-term financial gain threatened not only ecosystems, but also the traditional habitats of indigenous peoples. When such people banded together to resist that destruction, they were engaging in a form of collective self-defence, to protect their land, their environment and in some cases, their very survival as an indigenous people.

43. Bougainville was a notable example of that situation. It was the only place in the world where indigenous people had succeeded in closing a mine that was destroying their land. The reaction by the State of Papua New Guinea to the closure of the mine had been violent. The armed forces of Papua New Guinea had burned houses and villages, engaged in torture and extrajudicial killing and been given a licence to "shoot to kill" which was still in force. Those violations were taking place behind a blockade which kept out journalists and human rights organizations and shielded the armed forces from public scrutiny. The army was currently engaged in a three-pronged military attack on the mine site, intent on forcing the mine open by brute force, against the wishes of the indigenous people.

44. The Committee on the Elimination of Racial Discrimination had recently expressed its grave concern at the reports of serious human rights violations in Bougainville and about the possible resumption of large-scale mining operations there without due regard to the rights of population and to environmental degradation. It had also urged the Government to fulfil its obligation under the International Convention on the Elimination of All Forms of Racial Discrimination.

45. Mrs. GWANMESIA said she wished to join her voice with those of millions of women all over the world and say that enough was enough as far as the suffering of women was concerned. She did so not as a feminist but as a humanist. If the misery described by so many people were a mere allegation and not reality, the world would not have required the Declaration on the Elimination of Discrimination against Women or the Convention on the Elimination of All Forms of Discrimination against Women. That Convention had not come into force in 1981.

46. Most men still believed that women should continue to play second fiddle. When women cried out for equality, they were not craving to have the same physical appearance as men for, if they did, then women as mothers would be going against nature and opting for the termination of mankind.

47. The Fourth World Conference on Women had been scheduled for 1995 in Beijing because the traditional practices affecting the health of women and children persisted. Those practices, particularly as they concerned female children, were not only historical, economic and cultural but also political, social and religious. It was because those practices against the female sex had been held to be obnoxious, that the criminal codes of most countries had considered excessive payment of dowries, forceful marriage of female minors, illegal abortions, the rape of women and the defilement of female minors to be criminal acts and punishable under the law.

48. The United Nations Charter called for equal rights of men and women. It was because such discrepancies existed that the Charter reiterated the need to resolve economic, social, cultural and humanitarian problems in order to promote and encourage respect for human rights and fundamental freedoms for all, without distinction as to sex. The International Covenant on Economic, Social and Cultural Rights made it obligatory for States parties to guarantee the rights envisaged in the Covenant without discrimination as to sex. It was because civil and political discrimination had existed from time immemorial that the International Covenant on Civil and Political Rights obliged its States parties to respect and ensure to all individuals within their territories the rights recognized in the Covenant, again without any kind of discrimination based on sex or other factors.

49. Nevertheless, when a girl child was born in many parts of the world, she had to undergo the gruesome pain of having her clitoris cut off, the so-called female circumcision, in order to inhibit her sexual instincts. Unlike male circumcision, which was based on religious or medical reasons, female circumcision was performed purely because of the traditional contempt for the female child. As the girls grew up, they were assigned stereotyped duties and it was usually assumed that there was no need for them to be educated. In some countries, it was legal for female minors to be married at the age of 15, whereas the minimum age for boys was 18 years. The reason for that discrepancy was that the girl was allowed to get married at that tender age so as to inhibit her sexual instincts. In a number of countries, once the girl married, she had to be kept secluded and, when she did come out, she was forbidden to expose any part of her body and had to keep her face covered under pain of physical punishment or even death.

50. If she were unfortunate enough to lose her husband, the rites of widowhood awaited her. In most parts of Africa, the Middle East and Asia, she could not even sit on a chair. She was kept away from social circles, forced to wear sack cloth, and forbidden any possibility of remarriage. In some countries she was burned alive with her dead husband, because her lease on life had ended with his.

51. The nineteenth century French Civil Code, which was still applicable in parts of her own country, Cameroon, had a provision that was known as paternal authority, whereby only the father had the right to correct the children.

That was interpreted as meaning that women could not open bank accounts for their children without their husbands' consent. In some countries, girls were excluded from family inheritance, because they belonged to their husband's family once they married.

52. She wondered how many women held top-ranking posts in the civil services throughout the world, how many women were ministers of government and, more generally, what was the place for women in a democracy. She also asked why women had to lose their father's name in order to get married and have a family and why they had to lose their nationality in order to marry a man of a different nationality.

53. Mr. ITO (Observer for Japan) said that the representatives of a number of non-governmental organizations had raised the issue of "comfort women" during the Second World War. In that connection, he recalled that a statement had been made at the Sub-Commission's forty-fifth session concerning the findings of the study conducted by his Government on that issue. His Government had expressed its sincere apologies to all the women who had suffered physically and psychologically as a result of their experiences as comfort women, and was seriously considering how best to express its sentiments.

54. Since then, his Government had given priority to consideration of the issue, and was currently making every effort to formulate its conclusions.

55. Mrs. SABHARWAL (Observer for India), speaking in the context of Sub-Commission resolution 1993/13, said that terrorism had become a pervasive threat to human rights throughout the world, both as a danger to society and to human rights and because of its links to drugs trafficking and religious and political extremism.

56. The effect of terrorist activity on the psyche of future generations forced to grow up in a climate of fear and on the ethos of entire societies was alarming. Terrorism had initially emerged as a response by left-wing extremist groups to perceived injustices in society but, more recently, it had tended to be used in the furtherance of various violent and divisive forms of nationalism.

57. The acceptance of violence and intolerance led inevitably to the illicit international trade in weapons and in the drugs needed to finance them - the so-called narco-terrorism which, in some areas of the world, had led to an exponential increase in the number of drug addicts.

58. Terrorism was an attempt to destroy the very structures and institutions of democracy, without which there would be no human rights, the law of the jungle would replace the rule of law and disinformation and propaganda would replace legitimate expression.

59. Terrorism was also used to spread religious fundamentalism and to create social and religious divisions. That had led in some countries to ethnic cleansing and forced displacements. It was usually accompanied by blatant attempts to stir up religious fanaticism and by assaults on modern secular education.

60. It was unfortunate that such activities appeared to some extent to be tolerated by the silence of the international community and a degree of legitimacy had been afforded to the groups concerned. There was a tendency, for example, to refer to terrorist groups in some contexts as "armed opposition groups" and to refer to acts of terrorism as part of an "internal armed conflict". Such euphemisms ignored the fact that the violence in question assumed forms which were prohibited and was directed against targets which it was the duty of the State under national and international law to protect.

61. Due consideration had to be given to the responsibilities of a State faced with organized violence of that kind. Holding the State to account for its acts in combating violence, while the terrorist groups themselves were not so accountable because of deficiencies in the legal system, had the effect of weakening the State's ability to respond to terrorism and effectively provided terrorist groups with a licence to kill and maim at will.

62. The Vienna Declaration had emphasized the necessity of resisting the threat to human rights posed by terrorism, religious extremism and various separatist and secessionist movements. It had condemned all acts of terrorism as activities aimed at the destruction of human rights, fundamental freedoms and democracy, and had urged the international community to improve cooperation to prevent and combat terrorism. While States clearly had an obligation to act within the law - which itself was the terrorists' main target - the international community had a duty to address the issue and unequivocally to condemn terrorist acts as a gross violation of human rights.

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS (agenda item 8) (E/CN.4/Sub.2/1994/20)

63. Mr. SACHAR, Special Rapporteur on the realization of the right to adequate housing, introducing his second progress report (E/CN.4/Sub.2/1994/20), said that the first report reflected the fact that the right to adequate housing had come to be regarded as one of the fundamental human rights; however, the question still remained as to the precise legal obligations of the State in that area, a subject considered in Chapter V. He noted that ratification of international treaties did not by itself effect their incorporation into domestic law. Only in the United States did all international treaties automatically become part of domestic law; however, in other countries such as the United Kingdom where that did not happen, rules of interpretation had been developed according to which statutes had to be interpreted wherever their wording permitted in a way consistent with international law.

64. Thus, while few countries had domestic laws providing a specific positive right to adequate housing, no country had a specific law prohibiting the State from providing adequate housing to its citizens. There was thus nothing which was in contradiction to the obligations of States in the area of housing under international law. That, in his view, meant that States which had ratified the International Covenant on Economic, Social and Cultural Rights were under a legal obligation to provide their citizens with adequate housing, and the Covenant automatically empowered citizens to compel the State by recourse to law to honour that obligation. That principle had seldom been used, and it

was, perhaps, for the NGOs in particular to take the initiative and force Governments through the courts to honour the obligations they had incurred by ratifying the Covenant.

65. He noted that there was a widespread belief (addressed in paras. 65 to 76 of the report) that the right to adequate housing necessarily conflicted with the right to own property, an argument often cited being that the fabric of society might be irreparably damaged if the rights of property owners were in any way restricted. That argument was an erroneous one, in both legal and moral terms: under international treaties in which the right to property was protected and in countries where it was considered to be fundamental, it had never been doubted that the right to property had to yield to the greater social good of the community.

66. Much encouragement was to be drawn from the remarks of the Special Rapporteur on the right of everyone to own property to the effect that the use of private property had tended to concentrate the means of production in the hands of a few and led to the accumulation of great wealth by a small number of individuals. That had created deep class divisions between the small property-owning elite and the masses who owned nothing. The Special Rapporteur had also spoken of the need to maintain a close link between the rights to own property, the right to adequate housing and other relevant rights.

67. With regard to the various national legislations (paras. 46 to 64), there had been little time to undertake a detailed review because of late replies. Consideration had been given inter alia to legislation in India, where rent control had afforded tenants a degree of protection. However, certain recent amendments to that legislation had been motivated by the belief that a more "market-oriented" approach would help the homeless by generating more housing. That had not been the case, and it was clear that the market did not favour the needs of the poor. Another piece of Indian legislation was the Urban Land Ceiling Act, whose purpose was to bring about redistribution of land from wealthy landowners to the poor. Unfortunately, it had not been properly implemented and had not succeeded in its aims.

68. One piece of national legislation which might well be followed by other countries was the Homeless Persons Act (1977) in the United Kingdom, referred to in paragraph 60, which imposed a legal obligation on local authorities to provide housing for the homeless and the disabled.

69. With regard to the matter of forced evictions, he noted that, in the Philippines, the Supreme Court had recently ruled that the Human Rights Commission could not lawfully intervene to stop the demolition of housing in progress but could only petition the authorities or go to court at a later stage. That meant that there was little to prevent the destruction of entire communities, in some cases to provide land for the wealthy. Such occurrences highlighted the need for action, rather than lip-service, in defending housing rights, and for effective constitutional machinery to provide those rights.

70. Turning to the situation in East Jerusalem, he said that, according to the Palestinian Human Rights Information Centre, about 21,000 Palestinian families were homeless there. Policies of land expropriation and restricted

land use, aimed at promoting Jewish settlement, had made it impossible for Palestinians to obtain adequate housing. Building regulations also discriminated against Palestinians. For example, buildings in Palestinian neighbourhoods could not exceed two storeys in height, while those in Jewish quarters could have as many as eight. That had apparently been justified on grounds of "security", which appeared to have become a pretext for many questionable measures.

71. The report addressed inter alia some of the more common and damaging misconceptions in the area of the right to housing (chap. II). One such myth was the idea that social housing was in itself suspect and necessarily associated with poverty, poor health and crime. While some public-housing projects had led to problems of that kind, the quality of social housing varied greatly throughout the world and public housing in general had unquestionably benefited many millions of people who would otherwise not have been properly housed. Whatever the limitations of public housing, it remained one of the few effective ways of guaranteeing decent and secure homes to all.

72. Another myth addressed in the report was the idea that the private sector could provide adequate housing for all (paras. 22 to 24). The idea had become fashionable in many countries as Governments moved towards market-oriented solutions to social problems, but experience showed that private sector solutions and the abandoning of State responsibility tended to stimulate land speculation, pushing up prices, alienating and marginalizing the poor and even the middle classes. An example of the worst that could happen was Rio de Janeiro where, according to information provided by one local housing rights group, conflicts between real-estate interests and poor urban settlers had led to the deaths of 30 community leaders since 1991 in resisting forced evictions.

73. It was also a widespread belief that most housing was built by the public and private commercial sectors (para. 28). In fact, 65 to 70 per cent of all construction was in the community sector. Failure to recognize that fact had led to the adoption of policies and plans focusing almost entirely on the formal sector and to the denial of the essential support services needed by the community sector.

74. With regard to the commonly held misconception that squatters and pavement dwellers were idle, anti-social and prone to criminal activity (paras. 30 to 35), his own visit to a squatter colony in Bombay had shown that the very opposite was the case: such people in fact worked harder than the average and contributed significantly to the local economy. Furthermore, many squatters and pavement dwellers were forced to live in their current circumstances by forced evictions and demolitions and by the indifference of the authorities who had neglected their duty to provide them with housing.

75. The shortage of housing was often thought to be a problem only in developing countries (paras. 36 to 39). However, the European Federation of National Organizations Working with the Homeless (FEANTSA) estimated that at least 5 million people were homeless in the European Union, and that 15 out of every 1,000 inhabitants in France, Germany and the United Kingdom were homeless. That situation had arisen despite extensive legislation aimed at providing adequate housing. According to the estimates of the British Labour

Party, homelessness had tripled in the United Kingdom since 1979 while, in the United States, according to the Secretary on Housing and Urban Development, 600,000 people were homeless on any given night.

76. It was also a widely held belief that the evident failure of public housing programmes to provide sufficient housing was due to the inherent inefficiency of public-sector mechanisms (paras. 40 to 44), whereas it seemed more likely that public spending in the area had simply not kept pace with demand. Public-housing programmes were often among those targeted for cuts on the grounds of lack of resources, a claim which appeared hard to justify in the light of the resources which would be made available if arms expenditure were reduced by only 3 per cent per year during the 1990s.

77. The last myth addressed in the report was the idea that the right to housing was not related to other social concerns (para. 45). It had become abundantly clear that there was a complex link between the right to housing and, for example, environmental concerns and that the right to housing and other fundamental human rights were in fact indivisible.

78. With regard to responses received from countries concerning their national legislation on housing rights (paras. 108 to 112), he noted that the task of improving housing tended to be regarded by Governments as a priority, although progress in the area obviously left much to be desired. He would consider the replies received from Governments in more detail in his final report.

79. With regard to the draft international convention on housing rights set out in chapter IX, he emphasized his disagreement with the view held by many people that variations in the particular housing problems in different countries meant that an international instrument would not be helpful. Those differences were differences of detail, and the important consideration was to convince the international community of the right of citizens to adequate housing and the obligations of Governments to provide it. He looked forward to constructive comments and suggestions from members of the Sub-Commission and NGOs on the detailed provisions in the draft convention.

80. Turning to the preliminary recommendations and conclusions in chapter X, he noted that they included the recommendation that a special rapporteur be appointed by the Commission on Human Rights to report annually on the global housing situation. They also included the suggestion that the Committee on Economic, Social and Cultural Rights should consider the feasibility of preparing a general comment on forced evictions and the implications for that practice of the housing rights provisions of the Covenant. He also recommended that the preparatory work for the World Summit for Social Development in 1995 should take full account of the economic, social and cultural rights developed in the United Nations system, and that the second preparatory committee for Habitat II should take full account of the continuing work on the right to housing.

81. In conclusion, he expressed the hope that constructive comments and criticisms of the report from the members of the Sub-Commission and other participants would enable him to make the necessary improvements to his final report.

82. Ms. CHAVEZ said that the Special Rapporteur's comments on homelessness in the United States of America should be seen in the context of academic studies which showed that 50 per cent of homeless persons were in that position because of alcoholism, drug addiction or mental illness. Many people were living on the streets not because the Government did not provide housing for them but because they were too incapacitated to take advantage of the facilities available.

83. The Special Rapporteur's figures did not reflect inadequate funding, since people living on the streets would have received services if they were not too ill to apply for them. Another factor to be borne in mind was the increasingly high crime rate in public-housing units, which made it difficult for law-enforcement officers to go there and confiscate weapons - a problem to which Governments should pay more attention.

84. The CHAIRMAN, speaking in her personal capacity, said that, in many developed countries, unemployment had caused people to lose their homes. In the United Kingdom, for example, middle-class people had been evicted because, having lost their jobs, they were no longer able to keep up their mortgage payments. The same process was occurring in Nigeria. People were living in cars instead of houses. That aspect needed to be closely investigated.

85. Mr. SACHER (Special Rapporteur), said that while he was much less familiar with conditions in the United States of America than Ms. Chavez, he had visited a refuge for the homeless in New York, where the manager had given a picture somewhat different from that portrayed by Ms. Chavez. Many of the inmates had been addicted to alcohol and drugs when they had arrived, but they had managed to shake off the addiction once they had had somewhere to sleep at night. The homeless did not sleep on the streets because they liked to do so. The refuge which he had visited was one of the best. Some 75 per cent of its inmates were Afro-Americans, which was possibly also the situation in most areas. In any case, he would look very carefully into what Ms. Chavez had said.

86. The CHAIRMAN said that further discussion on agenda item 8 would be postponed until a later date.

ENCOURAGEMENT OF UNIVERSAL ACCEPTANCE OF HUMAN RIGHTS INSTRUMENTS (agenda item 13) (E/CN.4/Sub.2/1994/27)

87. Mr. BOUTKEVITCH, introducing the item, recalled the attempts, outlined in paragraphs 1-4 of document E/CN.4/Sub.2/1994/27, which the Sub-Commission had made since its thirty-second session, first through a working group and subsequently through the appointment of a single member, to encourage States that had not yet done so to ratify or accede to international human rights instruments. At its current session, the Sub-Commission's officers had entrusted him with the task of dealing with the matter. Since the working group had been discontinued in 1984, the information supplied by Governments to explain the difficulties encountered had been inadequate. In 1991, the Secretariat had not received a single reply to its inquiry.

88. Since the Sub-Commission's adoption of resolution 1992/1, two major events had taken place in the field of human rights within the United Nations system: in 1993 the World Conference on Human Rights had been held and, in 1994, the first High Commissioner for Human Rights had been appointed. The Vienna Declaration and Programme of Action adopted by the World Conference called urgently for action to encourage and facilitate ratification of, or accession to, the international human rights conventions and protocols adopted within the United Nations system or for succession to them for the purpose of facilitating their universal acceptance.

89. In order to implement the Vienna Declaration and Programme of Action, the High Commissioner for Human Rights and the Assistant Secretary-General for Human Rights had repeatedly urged States that had not yet ratified or acceded to international legal instruments to do so and had offered United Nations assistance in overcoming any particular difficulties encountered in that regard. Such encouragement was to be accompanied by regional and subregional seminars on human rights organized by the Centre for Human Rights and other United Nations bodies. The representatives of States that were not parties to international human rights instruments should urge and promote the ratification of, or accession to, those instruments by their Governments.

90. However, the experience of the past two years made it doubtful whether such activities would successfully promote ratifications of, or accessions or successions to, international human rights instruments, and in that connection he drew attention to the annex to document E/CN.4/Sub.2/1994/27 which contained a list of States that had ratified, acceded or succeeded to international human rights instruments since 25 June 1992. States did not reply to communications from the Secretariat and showed no desire to avail themselves of its assistance. The advisory services supplied by the Centre for Human Rights basically applied to post-ratification situations concerning the implementation of human rights instruments and included no facilities for assisting with ratification. That fact had greatly simplified his task of assessing the use of advisory services in that connection, since there was no such advisory service to assess.

91. It was more or less easy to reply to the Sub-Commission's request that he should analyse the complications preventing the ratification of international human rights instruments. In the first place, it must be pointed out that, since 1979, when the item had been placed on the Sub-Commission's agenda, no noticeable progress had been made in the Sub-Commission's efforts to convince Governments of the usefulness of providing them with help to ratify international human rights instruments. Governments had, however, shown an interest in exchanging unofficial views on the problem. A typical example had been the unofficial exchange of views which had taken place between members of the Working Group on Contemporary Forms of Slavery and representatives of Governments which had not ratified the Convention relating to its mandate, as reflected in paragraphs 15 and 16 of document E/CN.4/Sub.2/1994/33.

92. The question arose as to whether the Sub-Commission should include the item in its agenda in its existing form or whether it was worth retaining at all. In any reply to that question, account would have to be taken of at least four considerations. First, the absence of any official reply from a State concerning ratification or accession could not but waste time; secondly,

the absence of advisory services for ratification was a result of a continuing lack of interest by States; thirdly, the High Commissioner for Human Rights, the Assistant Secretary-General for Human Rights and the Centre for Human Rights were already making extensive and continuing efforts to promote and encourage further ratifications; and fourthly, the holding of unofficial consultations were the results of such encouraging activities.

93. In his view, those considerations were imperative factors in the Sub-Commission's fundamental review of its agenda. The success achieved in encouraging universal acceptance of international human rights instruments could hardly be attributed to the Sub-Commission's consideration of the topic. The help offered to States in the form of advice or assistance with ratifications could be extended more effectively by other sources in the United Nations system, including the new High Commissioner for Human Rights.

94. For all those reasons, he took the view that a decision by the Sub-Commission to continue consideration, every two years, of item 13 of its agenda in its existing form and without a change of strategy might lead to a deterioration to the point that it became an empty exercise. It would hardly promote the achievement of the necessary results in the universal acceptance of human rights instruments.

95. However, a new, more appropriate strategy might, perhaps, be elaborated. The goal of universal acceptance should not suffer any negative consequences as a result of a decision by the Sub-Commission not to continue to include the item in its agenda. Such a decision could, moreover, be of value in the Sub-Commission's attempts to rationalize its work and control its overburdened agenda. In any case, the possibility of examining the acceptability of international human rights instruments could be considered under other items of the agenda.

The meeting rose at 6 p.m.